

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL DENTON,

PLAINTIFF,

V.

KARIE RAINER ET AL.,

DEFENDANTS.

Case No. C19-5743 BHS-TLF

ORDER GRANTING LEAVE TO  
AMEND, SETTING DEADLINE  
FOR FILING A SECOND  
AMENDED COMPLAINT, AND  
SCHEDULING A STATUS  
CONFERENCE

This matter comes before the Court on the Court's Order Rejecting Report and Recommendation. Dkt. 78.

The Court explained that plaintiff's motion for preliminary injunction seeks injunctive relief against defendant's who plaintiff does not seek to enjoin in the operative complaint. Dkt. 78 at 4. Accordingly, the Court expressed that the Court and the parties would benefit from an amended complaint that clarifies plaintiff's claims and the relief sought. *Id.* Plaintiff agrees that the issues in this litigation can be clarified with an amended complaint and has requested leave to amend the operative complaint. Dkt. 88.

Pursuant to Federal Rule of Civil Procedure 15(a), after an initial period for amendment as of right, pleadings may be amended only with the opposing party's written consent or by leave of the court. Leave to amend should be freely given when

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1 justice so requires. Fed. R. Civ. P. 15(a)(2); *Desertrain v. City of Los Angeles*, 754 F.3d  
2 1147, 1154 (9th Cir. 2014) (“[T]his policy is to be applied with extreme liberality.”).

3 The Court must consider five factors when determining the propriety for leave to  
4 amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment,  
5 and whether the plaintiff has previously amended the complaint. *Desertrain*, 754 F.3d at  
6 1154; *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004).

7 There is no evidence indicating that plaintiff seeks to amend the complaint in bad  
8 faith or to cause undue delay. The Court has already stated that an amended complaint  
9 clarifying the issues before the Court would be beneficial to the Court and the parties.

10 Dkt. 78. Additionally, plaintiff prepared the operative complaint (Dkt. 10) while  
11 proceeding *pro se*; he has representation of counsel – counsel filed a motion for  
12 preliminary injunction, which has been pending until it was recently sent back for further  
13 proceedings before the Magistrate Judge; this would support granting leave to amend  
14 the complaint. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) (“Presumably  
15 unskilled in the law, the pro se litigant is far more prone to making errors in pleading  
16 than the person who benefits from the representation of counsel.”); *Haines v. Kerner*,  
17 404 U.S. 519, 520 (1972) (A pro se plaintiff’s pleading is ultimately held “to a less  
18 stringent standards than formal pleadings drafted by lawyers.”). Finally, it does not  
19 appear that defendants will be prejudiced by an amended complaint that clarifies the  
20 issues before the Court.

21 Based on the foregoing discussion, the Court grants plaintiff leave to amend the  
22 operative complaint. Plaintiff may file an amended complaint in compliance with the  
23 Court’s Order (Dkt. 78) on or before **December 14, 2021**. If plaintiff files an amended  
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1 complaint, then all of the other motions currently pending before the court (Dkt. 59,  
2 plaintiff's motion for preliminary injunction; Dkt. 76, defendants' motion to exclude expert  
3 testimony; and Dkt. 89, defendants' motion for summary judgment) will be denied  
4 without prejudice, as premature, for the reasons stated by the Court on the record  
5 during the hearing on November 30, 2021.

6 Assuming that plaintiff files another amended complaint, the parties are directed  
7 to meet and confer before January 4, 2022 to come to agreement (if possible) about the  
8 scope of discovery, the timing of fact discovery, the timing of expert witness discovery,  
9 and whether a stipulated protective order will be requested. The Court has scheduled a  
10 status conference for January 4, 2022 at 10:00 AM to consider the appropriate scope  
11 and timing of discovery, and to issue another pretrial schedule.

12 The Clerk is directed to send a copy of this Order to the parties in this litigation.

13 Dated this 3rd day of December, 2021.

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16 Theresa L. Fricke  
17 United States Magistrate Judge  
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